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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re John B. Williamson

Serial No. 74/551,521

Mark A. Oathout for John B. Williamson

Steven R. Foster, Trademark Examining Attorney, Law Office
107 (Janice O'Lear, Managing Attorney)

Before Cissel, Seeherman and Hairston, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

John B. Williamson has appealed from the final refusal of the Trademark Examining Attorney to register MEGADOME for "providing facilities for recreational activities and for the presentation of entertainment and sporting events; namely football, soccer, baseball, basketball, hockey, tennis, boxing, wrestling, rodeo, vehicular competitions, concerts, an amusement park, and carnival; and providing facilities for educational activities, namely seminars."¹

¹ Application Serial No. 74/551,521, filed July 20, 1994, and asserting a bona fide intention to use the mark in commerce.

Registration has been refused pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that MEGADOME is merely descriptive of applicant's identified services.

Applicant and the Examining Attorney have filed briefs,² but an oral hearing was not requested.

A mark is merely descriptive, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of a product or service. It does not have to describe every one of these. It is enough if it describes a single, significant quality, feature, function, etc. Moreover, the question is not decided in a vacuum but in relation to the goods on which, or the services in connection with which, it is used. See **In re Venture Lending Associates**, 226 USPQ 285 (TTAB 1985).

It is the Examining Attorney's position that MEGADOME directly conveys information of a characteristic of applicant's identified services, namely, that the facilities applicant provides are a megadome. In support of this position, the Examining Attorney has made of record a number of articles taken from the NEXIS data base in which

² With its appeal brief applicant submitted as exhibits certain materials which had not been previously made of record. Although the Examining Attorney has noted that these submissions were untimely, see Trademark Rule 2.142(d), he has not objected to them, and has treated them as though they were of record. Accordingly, we have considered all the exhibits in rendering our decision.

"megadome" is used as the term for a facility in which entertainment and sporting events are held:

...The city of Las Vegas has one of those all-purpose mega-domes on the drawing board. If it gets built, it could be the future home of the WAC football championship game.
"Rocky Mountain News," April 24, 1994

This was March Madness in December. Heavyweight contenders slugging it out right here in one of those megadomes.
"The San Diego Union-Tribune," December 6, 1992

...to attract a new pro football team. The city of St. Louis and its fans do not need a megadome stadium. An outdoor ballpark or stadium with natural turf... would be a welcome addition....
"Sports Illustrated," May 25, 1992

It's a well-meaning stadium, not one of those megadomes that feels like a convention center, but it's going to be a stadium nonetheless.
"The New York Times," September 30, 1990

"We were playing 3,000-to 5,000-seat clubs before Woodstock and when the movie came out we were flushed into the megadomes and ice hockey areas. We really stated losing contact with the audience and some of the fun went out of it."
"Chicago Tribune," November 17, 1989

...while the stadium has been good for football, it hasn't done as much for the city.

Built in 1975, this first of the megadomes was meant to serve as the centerpiece of economic development. Business would boom. Pilgrims would flock. Even a baseball team would follow.
"St. Petersburg Times," February 7, 1988

"We're not talking a megadome here,"
said Coleman. "This is 7,000 fixed
seats, and I see a bermed outfield."
"Star Tribune," February 24, 1995

The Examining Attorney has also submitted dictionary definitions showing that "mega-" is a prefix meaning "large" and "dome" means "a generally hemispherical roof or vault" and "any object or structure resembling the shape of this."³ In addition, he has made of record third-party registrations for marks which include the word DOME, e.g., SYRACUSE UNIVERSITY CARRIER DOME for, inter alia, providing stadium facilities;⁴ SUN DOME for, inter alia, providing covered stadium facilities;⁵ HOOSIER DOME for leasing and promoting facilities for sporting events and entertainment;⁶ and TACOMA DOME for providing stadium facilities.⁷ In all of these registrations, the word DOME has been disclaimed, thereby indicating the descriptive and/or generic⁸ nature of this word.

Finally, the Examining Attorney has pointed to an editorial written by applicant about his proposed facility, in which he states that Houston needs to "build a dome bigger than all the others, and call it the Megadome. The Megadome could have its own amusement or theme park inside

³ The American Heritage Dictionary of the English Language, © 1976.

⁴ Registration No. 1,910,519.

⁵ Registration No. 1,633,498.

⁶ Registration No. 1,385,585.

⁷ Registration No. 1,297,289.

⁸ The registration for HOOSIER DOME is on the Supplemental Register. Registration on the Supplemental Register is an acknowledgment that a term is merely descriptive; disclaimers are required only of generic terms.

as well...." "The Houston Chronicle," August 10, 1995.

Another article, written by applicant, contains the following statements:

Houston should demonstrate the ultimate in one-upmanship by building one bigger than all the others--and call it the "Megadome." Make it the largest domed facility in the world. Make it a micro-city as well, complete with its own theme park called "Megaland."

A fantastic name like the Megadome along with the sheer size would become a worldwide tourist attraction.... The Megadome would make the expression "bigger and better in Texas" as truism, not just a cliché.

The Megadome is an idea whose time has come. The utter excitement generated around the world's largest domed sports facility would attract many more fans than are currently going to the Astrodome to see either the Astros or Oilers.

"Houston Business Journal," August 25-31, 1995

Further, "applicant has gone on the record indicating the services are planned to be used in connection with a stadium facility which should be 'domed.'" Brief, p. 7. Applicant also hopes "that the facility will seat greater than 50,000 people, but Applicant cannot be more specific at this time in this intent to use application." Brief, p. 7.

It is clear from the evidence of record that applicant intends to use its mark for an extremely large domed stadium, one so large that it can also house an amusement park. The evidence also shows that MEGADOME would be an appropriate term to describe such a facility. As the

Examining Attorney has pointed out, the dictionary definitions and third-party registrations show that, when the individual elements MEGA and DOME are combined, the resulting term MEGADOME will be recognized for the descriptive significance engendered by the meanings attributable to the component terms. See **In re Gould Paper Corp.** 834 F.2d 1017, 5 USPQ2d 1110 (Fed Cir. 1987).

Applicant itself acknowledges that "when a large domed stadium facility is constructed to be used for providing sports and/or entertainment, such facility will receive a name consisting of some term(s) followed by 'dome.'" Brief, p. 4. Thus, MEGADOME, as applied to a sports or entertainment facility, will immediately be understood as meaning a large domed stadium.

However, we need not rely on an analysis of the individual elements of MEGADOME because the NEXIS evidence clearly shows that "megadome" is used to refer to stadiums or facilities where sports and entertainment events are held.

Applicant argues that, because it has applied to register MEGADOME for services which are rendered in connection with a domed stadium facility, rather than for domes as goods or for dome construction services, the mark is suggestive rather than merely descriptive. We are not persuaded by this argument. Applicant's services are identified as providing facilities for, inter alia, the presentation of entertainment and sporting events. Because

the facilities it intends to provide are clearly a megadome, MEGADOME immediately conveys information about a significant characteristic of applicant's services.

Applicant also asserts that because it is commonly understood that "dome" marks are used for domed stadiums, and that such names indicate one source and one place where one can go to see sporting events or entertainment, these names are inherently distinctive. Again, we do not find this argument persuasive. If a town has only one stadium, and, to paraphrase applicant's example, one person asks another, "Hey, would you like to go see Team X play Team Y at the stadium?", the second person will recognize that it is the particular stadium, i.e., a single source, to which the first person is referring. That, however, does not mean that "stadium" is not a generic term for stadium facilities. Nor do the third-party registrations cited by applicant show that all "dome" stadium marks are inherently distinctive. While such a mark may indeed be inherently distinctive if the "dome" portion is coupled with an arbitrary or suggestive term, e.g. ASTRODOME, that is not the case when the mark consists of a combination of descriptive terms. For example, in the registrations for GEORGIA DOME and design and for FLORIDA SUNCOAST DOME the registrants disclaimed, respectively, GEORGIA DOME, and FLORIDA and DOME, thereby acknowledging the descriptiveness of these words. Moreover, the third-party registrations submitted by the Examining Attorney show that HOOSIER DOME, with DOME

disclaimed, was registered on the Supplemental Register, an acknowledgment of the descriptiveness of this mark for "leasing and promoting facilities for sporting events and entertainment," and that SYRACUSE UNIVERSITY CARRIER DOME, with a disclaimer of UNIVERSITY and DOME, was registered pursuant to the provisions of Section 2(f), thereby indicating that the mark is not inherently distinctive.

Applicant has pointed to a registration for SUPERDOME for renting stadium and convention facilities, asserting that it was registered without resort to Section 2(f). Applicant essentially argues that MEGA is no more descriptive than SUPER, and that if SUPERDOME was found to be inherently distinctive, MEGADOME should be found inherently distinctive also. We note that the registration for SUPERDOME, No. 960,626, issued in 1973, at a time when the Patent and Trademark Office did not print information as to whether a registration issued pursuant to Section 2(f). The SUPERDOME registration file is not part of the record in this case, and we therefore do not know whether it was based on acquired distinctiveness or, if not, what evidence was available to the Examining Attorney at the time the application was examined. In any event, we must decide whether MEGADOME is merely descriptive of applicant's identified services on the record before us, and the evidence of record herein clearly demonstrates that MEGADOME is a term used for large domed stadiums in which entertainment and sporting events are held.

Applicant also relies on a survey taken of people in the Houston metropolitan area in an attempt to show that MEGADOME has only a suggestive, rather than a merely descriptive significance, for this group of consumers. After questions such as "if we built a new domed stadium, would you want it to be the largest and most famous dome in the world," and asking the respondents for their opinions about four possible names, including MEGADOME, the respondents were asked why they liked the name MEGADOME. Applicant points to certain of the responses which use words such as "implies," or "sounds" or "it makes me think of," or "it seems like," e.g., "it implies big and multipurpose facility," "it implies the biggest and the best," "sounds big," "sounds big and great," "it makes me think of something very big," "seems like it would be grand" to support his position that MEGADOME is suggestive.

There are many problems with this survey, including, as pointed out by the Examining Attorney, the fact that the respondents were asked, after being told that MEGADOME would be the name for the stadium, why they liked the name, rather than what the name means to them. Moreover, we cannot accept applicant's view that because some of the respondent's couched their answers in indefinite terms such as "implies" and "sounds," that they would regard MEGADOME as only suggestive of such a facility. In fact, despite the way in which the question is worded, there were a very large number of responses of "big," or words to that effect, e.g.,

"the word mega means large," "says biggest and largest and best," "huge," "I think it is an appropriate name, after all it would be the biggest," "means big," "I would want it to be the biggest so the name just fits," "I like the name because it means super, large, big, it is the perfect name."

Finally, applicant has submitted excerpts taken from a DIALOG data base for its assertion that St. Petersburg, Florida and San Antonio, Texas, have recognized MEGADOME as a good name or mark for a domed facility. One article, which was reprinted in several newspapers, including the July 22, 1992 "Chicago Tribune," states that Megadome was one of the names which was suggested to revitalize the image of the Florida Suncoast Dome. The second article, which does not indicate its provenance, is dated October 15, 1990, and states that the Number 2 choice for the domed stadium in San Antonio was Megadome. Again, we agree with the Examining Attorney's point that "the fact that other parties have considered adopting the mark in no way proves that the mark is not descriptive. Parties sometimes adopt descriptive marks." Brief, p. 11.

Decision: The refusal of registration is affirmed.

R. F. Cissel

E. J. Seeherman

Ser No. 74/551,521

P. T. Hairston
Administrative Trademark Judges
Trademark Trial and Appeal Board